

7.0 Implementation

Implementation Requirements

The following is an analysis of federal, state and local requirements for the implementation of the Black Rock Canal Park Master Plan.

Federal Requirements

The Corps of Engineers has jurisdiction over all waters of the United States and permits are required for all projects which involve work in the waters of the United States. There are two types of federal permits that may be required:

Section 10 of the Rivers and Harbors Act approved March 3, 1899, prohibits the unauthorized obstruction or alteration of any navigable water of the United States. The construction of any structure in or over any navigable water of the United States, the excavating from or depositing of material in such waters, or the accomplishment of any other work affecting the course, location, condition, or capacity of such waters is unlawful unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of the Army. The instrument of authorization is designated a permit.

Section 404 of the Clean Water Act authorizes the Secretary of the Army, acting through the Chief of Engineers, to issue permits, after notice and opportunity for public hearing, for the discharge of dredged or fill material into the waters of the United States at specified disposal sites. The selection and use of disposal sites will be in accordance with guidelines developed by the Administrator of EPA in conjunction with the Secretary of the Army and published in 40 CFR part 230. If these guidelines prohibit the selection or use of a disposal site, the Chief of Engineers shall consider the economic impact on navigation and anchorage of such a prohibition in reaching his decision. Furthermore, the Administrator can deny, prohibit, restrict or withdraw the use of any defined area as a disposal site whenever he determines, after notice and opportunity for public hearing and after consultation with the Secretary of the Army, that the discharge of such materials into such areas will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas, wildlife, or recreational areas.

New York State Requirements

Protection of Waters Permit – This permit is required for disturbing the bed or banks of a “protected stream” (disturbance may be either temporary or permanent in nature); a protected stream is one with a classification and standard of C(T) or higher. The Niagara River in the project vicinity is classified as AS, which is a higher classification than C(T) and indicates a best usage for a source of drinking water, swimming and other recreation, and fishing. This permit is also required for the excavation or placing of fill in navigable waters of the state, below the mean high water level, including adjacent and contiguous marshes and wetlands, with a water classification and standard of C or D.

This permit is a joint permit application that is filed with the New York State Department of Environmental Conservation (DEC), the US Army Corps of Engineers (USACE) and several other state agencies; the Office of General Services (OGS), and the Department of State (DOS). The permit application must include detailed plans of the work proposed for the streambed and banks. This means that the design of the project must be resolved before the application can be filed. Though the requirements for the permit are not onerous, the review time can be lengthy making it important to file as early as possible once the design is resolved.

State Environmental Quality Review (SEQR) – The basic purpose of SEQR is to incorporate the consideration of environmental factors into the existing planning, review and decision-making processes of state, regional and local government agencies at the earliest possible time. To accomplish this goal, SEQR requires that all agencies determine whether the actions they directly undertake, fund or approve may have a significant impact on the environment, and, if it is determined that the action may have a significant adverse impact, prepare or request an environmental impact statement. Since there is no master plan for the ultimate buildout of the park, SEQR must be conducted in pieces. This approach must be done with care since it can be viewed as “segmentation” which is dividing a project into smaller pieces in order to make the impact seem smaller. Conducting SEQR on the initial improvements proposed should not be viewed as segmentation since the ultimate buildout is not known

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and since the initial improvements are a “stand alone” project - that is, these improvements do not depend on subsequent actions to complete the project.

State Pollutant Discharge Elimination System (SPDES)
– New York State law requires a permit for constructing or using an outlet or discharge pipe (referred to as a “point source”) that discharges wastewater into the surface waters or ground waters of the state. The term wastewater in this context includes stormwater. If the stormwater system at Black Rock Canal Park has a new outfall directly into the Niagara River or Cornelius Creek, then a SPDES permit will be required. The DEC has a website describing this permit and the requirements at <http://www.dec.ny.gov/permits/6054.html>.

Stormwater Permit for Construction Activities - This DEC-administered permit will be required for construction work at Black Rock Canal Park since it applies to construction activities that disturb one or more acres of land. The permit regulates stormwater quantity and quality both during and after construction. The permit requires best management practices, which are designed to ensure that the site’s post-construction runoff quantity is equal to, or less than, the pre-construction runoff rates - If new impervious surface is added to the site, the increased runoff must be mitigated on-site using measures such as on-site stormwater retention. In addition, the permit requires a stormwater pollution prevention plan (SWPPP) to reduce sediment runoff and improve the quality of stormwater. Since the City of Buffalo is a regulated MS4 (Municipal Separate Storm Sewer System), the City must review the SWPPP and issue a MS4 SWPPP Acceptance Form which gets forwarded to the DEC along with a Notice of Intent. Measures to control stormwater pollution during construction include silt fences (or similar) at the down-slope edges of the construction area and around catch basins, etc. Post-construction stormwater quality improvement measures may include directing runoff through plant-lined swales or through sand or gravel areas to provide filtration, or installing specially designed catch basins that trap both sediment and floatable contaminants.

New York State Department of State (DOS) Federal Consistency Assessment - Since the project site lies within a designated coastal zone, any federal action, such as the review of the Protection of Waters Permit (described above), would require a Federal Consistency Assessment. NYSDEC would forward the permit application to the DOS for a review to make sure that the proposed action is consistent with coastal policies.

Local Requirements

Road Cut Permit – This permit will be required by the City of Buffalo Department of Public Works for disturbance to the park entrance road off Niagara Street. In the case of the Black Rock Canal Park project, there may need to be a gas line installed that would necessitate the road cut. This permit would be obtained just prior to construction by the project contractor.

Plumbing Permit – A permit may be needed to use the water and wastewater lines since the volume of flow may be different than the existing design rate. This permit would be obtained from the Erie County Water Authority by the project contractor.

Funding

Initial Improvements Funding

Monies from a variety of sources has been grouped into a fund for initial improvements to Black Rock Canal Park. Those funds are:

Environmental Protection Fund/NYS Department of State	\$500,000
NYS Canal Corporation	\$100,000
Erie County	\$ 50,000

*Additional funding has been allocated to the Black Rock Canal Park Project from New York State Multimodal Transportation

New York Power Authority Funding via Niagara Greenway Process

The Niagara River Greenway Commission determines if a project is consistent with the Niagara River Greenway Plan. If an action is determined to be consistent, funding is distributed by the various Greenway Standing Committees (in the case of Black Rock Canal Park, the Erie County Standing Committee). Black Rock Canal Park should be a strong candidate for funding from this source. Once approved for funding, the actual funds are available the following year - in this case if Black Rock were approved for funding in 2010, funds would not be available until 2011 making this funding source a strong possibility for phase 2.

Other Potential Funding Sources

Other funding sources commonly used for waterfront parks is Environmental Protection Funds (EPF) that, in New York State, is administered by the NYS Department of State. The project is located within a designated coastal zone making it a prime candidate for these funds.